IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8176 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 8176 of 2004

MS VAIBHAVI K PARIKH for Petitioner No. 1-3

MR KV SHELAT for Petitioner No. 1-3

MR AY KOGJE, APP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 28/10/2004

ORAL JUDGEMENT

1. By invoking the jurisdiction of this Court under Sec.482 of CrPC, the present petition is filed by the petitioners for quashing and setting aside the proceedings of Criminal Case No. 207/2003 pending in the Court of ld. Addl. Chief Metropolitan Magistrate, Ahmedabad.

2. This matter was listed before this Court on earlier occasions and on 13.10.2004, ld.Sr.Counsel Mr. SN Soparkar appeared for the petitioners and had taken this Court through relevant aspects and ld. Addl. Central Government Standing Counsel Ms. Davawala had placed the version of the department as reflected in the affidavit and the documents attached in support of the affidavit i.e. page Nos. 47 to 59. When matter was listed on 25.10.2004, it was pointed out that now Ms. Davawala is not appearing on behalf of Central Government and so in the interest of justice, matter was adjourned and Registry was directed to list the matter for final disposal today.

3. It has been submitted by the petitioners that as the complainant -respondent no.2 has failed in withdrawing the criminal proceedings initiated against the petitioners and in dropping the same in view of settled legal provisions and General Circular No.13/2003 dated 25.03.2003, the proceedings of Cri. Case No. 207/2003 pending in the court of ld. Addl. Chief Metropolitan Magistrate, Ahmedabad filed by respondent No.2 -original complainant be quashed. The say of the petitioners is that the petitioner No.1 as Private Ltd. Company, submitted one application under Sec.560 of the Companies Act, 1956 (hereinafter referred to as the Act) on 26.03.2002 to respondent No.2 requesting respondent No.2 to strike off the name of the company from the register of Registrar of Companies. There was an amendment in the Companies Act,1956 by inserting section 3(3) and 3(5) requiring the private limited companies to increase the paid-up capital atleast Rs.1 Lakh by 13.12.2002 failing which the company shall be deemed to be defunct within the meaning of section 560 and its name shall be struck off from the register by the registrar. Since the petitioners have filed an application under Sec.560 of the Act to respondent No.2 to strike off the name, the petitioner No.1 company did not raise the paid-up capital. However, on the allegation that the petitioner company has not increased paid-up capital, criminal proceedings came to be launched against the petitioners. According to the petitioners, when the decision has been taken to struck off the name of the company from the register of Registrar of Companies, there was no need to increase the paid-up capital at all.

It is the say of the petitioners that as per the provisions of Sec.3(5) of the Act, at the most proceedings under Sec.560 of the Act could have been initiated against the petitioners and not the criminal proceedings. General Circular No.13/2003 has not been properly complied with and it was not even required for the company itself to make an application. It is relevant to note that second application was also moved by the petitioner No.1 company on 24.06.2003 under Simplified Exit Scheme and appropriate administrative decision has been taken by the authority. Even then the department is not dropping the proceedings or withdrawing the case.

4. Reply affidavit filed by respondent No.2 is based on one technical objection whereby it is contended that unless the formal publication is made in the Govt. Gazette, the department can not either withdraw or drop the proceedings. For the purpose of present Cri. Misc. Application, it would be beneficial to quote relevant part of the reply affidavit whereby it emerges that many vital aspects have been accepted even by the complainant, which reads as under :-

" Notwithstanding what have been said above it is most respectfully submitted that under the provisions of Section 560 of the Companies Act,1956 and due procedure provided therein name of any company may be struck off from the Registry of the Registrar of Companies. In this back grounds the Ministry of Company Affairs, has introduced a Simplified Exit Scheme in the year of 2003 for providing as easy exit opportunity to companies those intend to close the business and struck off. Under the said SES Scheme, total number of 2308 companies have filed application. Out of the same advertisement in news paper have been given for 1561 companies after positively consideration name of 53 companies have been recommended to the Govt. of India Press for publication in Official Gazette. All such applications are received to be scrutinized and pursued in the interest of investors and Bankers and public. In this connection it is further submitted that this office has advertised name of such considered companies in both Gujarati and English news paper like Gujarat Samachar, Sandesh and Indian Express vide news paper dated 6.12.2003, 30.5.2003, 6.7.2003, 9.7.2003, 28.5.2003, 29.5.2004, 6.7.2004, 9.7.2004, 6.7.2004, 17.8.2004 and 18.8.2004. After expiry

of 45 days of such publication further actions are required i.e. gazette publication and final struck off to be taken. In the present case final step for publication in Govt. of India Gazette has already been taken vide this office letter dated 14.09.2004 and the respondent Office inviting for the publication of the Gazette Authority. On receipt of the publication copy from the Gazette Authority the name of the petitioner company will be struck from the Registry immediately. However, it is submitted that still such final gazette notification U/s 560(5) are published, the company is living and exist with all liability with ROC. In view of the facts and circumstances as explained above it is most respectfully submitted that the application of the Applicant Company and its directors are premature illegal and bad in law. As the Company's application under the scheme has been favourably considered and after publication of Notice in Gazette of Govt. of India, the name of the company will be finally struck off, hence petitioner should have awaited till final publication."

While dealing with contentions raised in para-13, it has been averred in the said affidavit as under:-

" It is submitted that it is true that no Public complaints or objections are received against the company. Hence, this office has rightly and duly sent the name of the company for publication in the official Gazette of Government of India. It is further submitted that publication in official Gazette is still awaited. Hence, as per the circular No.13 of 2004, the prosecution will be withdrawn only after final notice in the Official Gazette for striking off U/s 560 of the Act. Copy of the ....."

5. In view of the averments made in the affidavit reproduced as above, it is clear that the decision to struck off the name is already taken and it is rightly submitted by ld. Sr.Counsel Mr. Soparkar, pointing out relevant clauses of General Circular No.13 i.e. Cl.Nos.7, 9 & 12, that the publication of the notification referred to in the reply affidavit must be after after taking decision to struck off the name. So, the name of the company must have been struck off before publication of the notification. After publication of Notification, the Company stand dissolved. This

submission is very much accepted by the complainant inasmuch as in Notice Annex.B enclosed in support of the affidavit of respondent No.2, it has been clearly notified that :-

" Notice is hereby given pursuant to section 560(5) of the Companies Act, 1956, that names of the following companies from the date of publication in the Official Gazette of this notice, the companies shall dissolved."

In view of above, it is of no use continuing with criminal proceedings and it was obligatory on the part of the complainant to withdraw the proceedings and inform the Court regarding the same in view of the fact that all formalities to struck off the name have been undergone by the department.

6. On earlier occasion, Ms. Davawala has taken the Court to issue No.7 (P.54). However, the same does not apply to the present petitioners as this is a case non-increase of paid-up capital and not the case of non-filing of balancesheet and other documents.

7. The Court is asked to consider Sec.560(5) of the Act referred to while passing the order by this Court earlier on 13.10.2004 when matter was ordered to be listed for final disposal. I have considered the provisions of Sec.560(5) of the Act and said provisions clearly support the say of the petitioners and it is rightly argued that the prosecution against the present petitioners is not sustainable because the department could have taken appropriate decision at the earliest for withdrawal of the criminal prosecution. As the department has not withdrawn the case, this Court, in view of the facts and circumstances narrated above and in view of settled legal position, positively can quash the criminal proceedings. Hence, present Cri. Misc. Application requires to be allowed.

8. For the reasons aforesaid, Cri. Misc. Application is hereby allowed. The proceedings of Criminal Case No. 207/2003 pending in the Court of ld. Addl. Chief Metropolitan Magistrate, Ahmedabad, are hereby quashed and set aside.

9. Ld. APP Mr. AY Kogje has nothing to add.

[C.K. BUCH, J]

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